

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Subsection (b)(91.1) of Section 7.50  
Title 14, California Code of Regulations  
Re: Klamath River Sport Fishing Regulations

- I. Date of Initial Statement of Reasons: January 2, 2008
- II. Date of Amended Initial Statement of Reasons: March 17, 2008
- III. Dates and Locations of Scheduled Hearings:
  - (a) Notice Hearing: Date: February 8, 2008  
Location: San Diego, CA
  - (b) Discussion Hearing: Date: March 7, 2008  
Location: Stockton, CA
  - (c) Discussion Hearing: Date: April 11, 2008  
Location: Bodega Bay, CA
  - (d) Adoption Hearing: Date: June 27, 2008  
Location: Sacramento
- IV. Description of Regulatory Action:
  - (a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

The Klamath River System, which consists of the Klamath River and Trinity River basins, is managed through a cooperative system of State, Federal, and Tribal management agencies. Salmonid regulations are designed to meet natural and hatchery escapement needs for salmonid stocks, while providing equitable harvest opportunities for ocean sport, ocean commercial, river sport, and tribal fisheries.

The Pacific Fishery Management Council (PFMC) is responsible for adopting recommendations for the management of sport and commercial ocean salmon fisheries in the Exclusive Economic Zone (three to 200 miles offshore) off the coasts of Washington, Oregon, and California. When approved by the Secretary of Commerce, these recommendations

are implemented as ocean salmon fishing regulations by the National Marine Fisheries Service (NMFS).

The California Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport (inside three miles) and the Klamath River System sport fisheries which are consistent with federal fishery management goals.

Two Tribal entities within the Klamath River System, the Hoopa Valley Tribe and the Yurok Tribe, maintain fishing rights for subsistence fishing and commercial fisheries that are managed consistent with federal fishery management goals. Tribal fishing regulations are promulgated by the Hoopa and Yurok Tribes.

### **Klamath River Fall-Run Chinook**

Klamath River fall-run Chinook (KRFC) salmon harvest allocations and spawning escapement goals are established by the PFMF. The KRFC salmon harvest allocation between tribal and non-tribal fisheries is based on court decisions and allocation agreements between the various fishery representatives.

The annual KRFC river sport salmon quota is recommended by the PFMF and the 2008 PFMF allocation is currently unknown. All proposed closures for adult Chinook salmon are designed to maximize and equitably distribute harvest of adult KRFC salmon while operating within the annual quota.

### **Klamath River Spring-Run Chinook**

The Klamath River System also supports Klamath River spring-run Chinook salmon (KRSC). KRSC salmon typically enter the estuary in the spring and migrate to thermal refugia in the headwaters of several major tributaries in the basin. They hold in tributary headwaters sexually maturing over the summer and spawn in September prior to KRFC salmon spawning. Naturally produced KRSC salmon are both temporally and spatially separated from KRFC salmon in most cases. In addition to natural stocks, the Department's Trinity River Hatchery facility produces 1.4 million KRSC salmon annually as mitigation for habitat lost above the Trinity Dam.

Presently, KRSC salmon are managed under the general basin seasons, daily bag limits, and possession limit regulations and are not under PFMF allocation management.

### **KRFC Salmon Quota Management**

The 2007 quota for the Klamath River System river sport harvest was 10,600 adult KRFC salmon. Preseason stock projections of 2008 adult KRFC abundance will not be available from the PFMC until March 2008 and the 2008 basin quota will be recommended by the PFMC and adopted by the Commission at their April 2008 meeting.

For public notice requirements, the Department recommends the Commission consider a range of 0 - **30,000** adult KRFC salmon quota in the Klamath River basin for the river sport fishery. This recommended range encompasses the historical range of the Klamath River basin quotas and allows the PFMC or Commission to make adjustments during the 2008 regulatory cycle.

The Commission may modify the KRFC river sport salmon quota which is normally 15% of the non-tribal PFMC harvest allocation. Commission modifications need to meet biological and fishery allocation goals specified in law or established in the PFMC Salmon Fishery Management Plan otherwise harvest opportunities may be reduced in the California ocean fisheries.

The annual KRFC salmon quota is split evenly, with 50% of the quota allocated to the lower Klamath River downstream of the Highway 96 Bridge at Weitchpec and 50% to the remainder of the upper Klamath River System upstream of the Highway 96 Bridge at Weitchpec and the Trinity River Basin. This division ensures equitable harvest of adult KRFC salmon throughout the Klamath River System.

The Spit Area (within 100 yards of the channel through the sand spit formed at the Klamath River mouth), is proposed to close to all fishing after 15% of the Klamath River System quota has been taken downstream of the Highway 101 bridge. This provision only applies if the Department projects that the total Klamath River System quota will be met. This closure is intended to prevent excessive take near the mouth where fish are concentrated and will help to provide an equitable distribution of KRFC salmon harvest in the upper river.

The upper Klamath River System is further divided into three sub-quota areas:

1. 17% from 3,500 feet downstream of the Iron Gate Dam to the Highway 96 bridge at Weitchpec,
2. 16.5% for the Trinity River downstream from Hawkins Bar to the confluence with the Klamath River, and
3. 16.5% for the Trinity River downstream from Old Lewiston Bridge to Cedar Flat.

These sub-quota areas are based upon historical angler effort distribution and ensure equitable harvest of adult KRFC salmon in the upper Klamath River and Trinity River.

The quota system requires the Department to monitor angler harvest of adult KRFC salmon in each sub-quota area. All sub-quota areas will be monitored on a real-time basis except for the following area:

Klamath River above Weitchpec and Trinity River: Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the Klamath River above Weitchpec and the Trinity River for the 2008 season. The Department has reviewed salmon harvest and run-timing data for these areas. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates historic creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the KRFC salmon harvested in the Klamath River and Trinity River. The HPM will be used by the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

### **Current Sport Fishery Management**

The KRFC salmon annual quota is divided into sub areas and the harvest conducted under real-time quota management. The KRSC salmon harvest is managed under the general basin seasons without real-time monitoring due to lack of adequate funds.

The Department presently differentiates the two stocks by following dates with minor sub-area differences to providing equitable harvest opportunities:

1. December 1 through August 15 - General Season (KRSC).
2. August 15 to November 30 - KRFC quota management.

The daily bag limits and weekly possession limits apply to both stocks within the same sub-area and time period.

### **Proposed Changes**

The Department is proposing the following changes to current regulations:

#### Open Season and Bag Limits

The Department proposes combining all of the open season and bag limit language into the regulations table contained in (b)(91.1)(E) to have these important regulations found in one location to reduce public confusion and improve angler compliance.

Varied openings and closures for both KRFC and KRSC stocks are designed to meet natural and hatchery escapement needs, while providing equitable harvest opportunities for all areas. The proposed changes by species from current regulations are shown below.

#### General Area Closures

The general area closures ending dates are proposed to extend until December 31 to provide additional protection to KRFC salmon still in the system.

#### KRFC Season, Bag Limit, and Possession Limit

For public notice requirements, a range of KRFC bag and possession limits are proposed until the 2008 basin quota is adopted. As in previous years, no retention of adult KRFC salmon is proposed for the following areas, once the sub quota has been met.

The opening date for the Klamath and Trinity rivers are proposed to be the same for all sub-areas within each river to increase regulation clarity and reduce public confusion. The Trinity River will open two weeks after the Klamath River to allow for adequate migration time from the ocean. The ending date is proposed to extend until December 31 to provide additional protection to KRFC salmon still in the system.

The proposed open seasons and range of bag limits for KRFC salmon stocks are as follows:

1. Klamath River - August 15 to December 31
2. Trinity River - September 1 to December 31
3. Bag Limit - **[0-4]** Chinook salmon - only **[0-3]** fish over 22 inches total length until sub quota is met, then 0 fish over 22 inches total length.

The weekly possession limit is proposed as a range of **0 to 6** Chinook salmon over 22 inches total length may be retained in any 7 consecutive days when the take of salmon over 22 inches total length is allowed. The annual possession limit of no more than 12 Chinook salmon is proposed to be dropped as this measure was not adequately enforceable.

#### KRSC Season, Bag Limit, and Possession Limit

The wild KRSC salmon are primarily limited to two sub-basins of the Klamath River watershed, the Salmon River and the South Fork of the Trinity River (SFTR). The populations of wild spring-run Chinook salmon in these watersheds appear to be at all time lows. This is especially true of Salmon River stocks. The 2005 dive survey recorded the lowest number of spring-run returning to the Salmon River in the historic data set.

This is a significant concern to the Department considering that these stocks are genetically the most appropriate candidate to repopulate the upper Klamath River basin, once historical access is restored. SFTR stocks, although somewhat more abundant, appear to be in decline and warrant protection measures.

The Department is proposing more restrictive measures to protect wild KRSC salmon outside of the KRFC quota period.

The proposed open seasons for KRSC salmon stocks are as follows:

1. Klamath River - January 1 to August 14
2. Trinity River - January 1 to August 31
  - a. Except for Trinity River main stem downstream from 250 feet below Lewiston Dam to the Old Lewiston bridge - April 1 to August 31.  
This section of river is designated as wild trout waters.
3. No Chinook salmon may be retained in the following areas:
  - a. Klamath River downstream from Iron Gate Dam to Weitchpec - January 1 to August 14
  - b. Trinity River downstream from the South Fork Trinity River mouth to the confluence with the Klamath River - January 1 to August 31

These closures provide protection for naturally produced KRSC while allowing sport harvest opportunities on the hatchery component of the KRSC salmon run in the lower Klamath River.

The bag and possession limits are proposed as a range from 0 to 2 Chinook salmon of any size and the weekly and annual possession limits are proposed to be dropped to provide additional conservation measures.

#### South Fork Trinity River Season Change

The Department proposes to change the opening dates for angling on the SFTR and Hayfork Creek from the fourth Saturday in May to November 1. Current regulations allow angling in both of these areas from the fourth Saturday in May through March 31. During this period anglers may take hatchery trout/steelhead and brown trout on the SFTR. There is no take of trout on Hayfork Creek. There is no take of Chinook salmon allowed in either system.

In the SFTR and Hayfork Creek during the summer months, instream flows average approximately 35 cubic feet per second (CFS) in the SFTR and approximately 15 CFS in Hayfork Creek. Both water temperatures and habitat availability become limiting factors during this period. During the summer adult salmonids are restricted to stratified holding pools and it

is not uncommon for surface water temperatures to exceed 70 degrees Fahrenheit.

The SFTR supports one of the last viable populations of Klamath River spring-run Chinook (KRSC) in the Trinity River basin as well as a population of summer steelhead. Both of these fisheries are in decline and although neither species is currently a candidate species for listing there is a great deal of concern within the Department and scientific community that these stocks are in jeopardy. The Department believes that angling activities in the SFTR during the summer months will adversely affect KRSC and summer steelhead populations. Fish that are caught and released are much more subject to mortality due to the warm water temperatures and fish restricted to holding pools during this period and are extremely vulnerable to illegal take. Most of the basin is remote and difficult to access making enforcement a daunting task.

Following this logic the Department recommends that angling on the SFTR downstream of the Hyampom Bridge to its confluence with the Trinity River and Hayfork Creek from the Highway 3 Bridge downstream to its confluence with the SFTR should be open from November 1 through March 31.

#### Trinity River Trout Bag and Possession Limits

Trinity River steelhead/hatchery trout populations have increased dramatically over the last three years. Steelhead escapement estimates are performed annually by the Department's Trinity River Project (TRP). These estimates are derived from steelhead trapped and tagged at a weir on the main stem Trinity River near the town of Willow Creek and subsequently recovered in the sport fishery or during carcass surveys and from steelhead recovered at Trinity River Hatchery.

In 2006 an estimated 41,390 steelhead returned to the Trinity River. The run was comprised of 8,781 naturally produced fish and 32,609 fish of hatchery origin. Anglers harvested an estimated 911 adults in the fishery in 2006. Preliminary projections for the 2007 run appear to be even higher than the 2006 estimate. The mitigation production goal for steelhead at the Trinity River Hatchery is 800,000 yearlings. To produce these fish the hatchery must spawn at least 1000 adults (assuming a 1:1 male to female ratio returning to the hatchery). Straying of hatchery fish into the naturally reproducing population of steelhead is undesirable and during cycles of high population abundance it is very likely.

Following this logic and for public notice requirements, the Department proposes increasing the daily bag limit range from 1 to 5 hatchery trout or steelhead and increasing the possession limit range from 1 to 10 hatchery

trout or steelhead on the main stem Trinity River downstream from the Old Lewiston Bridge to the confluence with the Klamath River. The benefit is twofold: it provides increased angling opportunity to the general public on Trinity River Hatchery stocks and reduces straying of excess hatchery stocks into natural spawning areas without impacting Trinity River Hatchery's ability to reach mitigation production goals.

#### Brown Trout Bag Limit Change

Based upon public input and Department data that shows no brown trout distribution outside of the Trinity River, the brown trout bag and possession limits will only apply to the main stem of the Trinity River to reduce public confusion and mistaken identification and take of other salmonids of special concern in areas where the brown trout are not found.

Additional minor changes were made to the regulations for clarity.

**On March 14, 2008, the PFMC developed three 2008 season options for public review that allowed a range of harvest quotas from 27,100 to 27,400 for the Klamath River Sport Fishery. The ISOR was amended to increase the upper bound of harvest quota and provide an increased bag and weekly possession limits for additional harvest opportunities. The final PFMC regulation recommendations will be made on April 11, 2008 in Seattle, Washington.**

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code.

Reference: Sections 200, 202, 205, 206, 215 and 316.5, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None

- (e) Public Discussions of Proposed Regulations Prior to Notice Publication:

No public meetings are being held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.



V. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

The use of more liberal regulations for bag limits, possession limits and fishing methods. For KRFC salmon more liberal regulations would be less desirable than those proposed because they could create risk of an intense fishery reaching or exceeding the quota in a very short time. Reaching the quota in a very short time could be damaging to the local economy. Exceeding the allowable harvest could be damaging to the KRFC salmon stocks. For Trinity River hatchery trout\steelhead stocks increased bag and possession limits on marked hatchery fish will help prevent straying into areas of natural spawning and provide increased angling opportunity.

(b) No Change Alternative:

The change is necessary to continue appropriate harvest rates and an equitable distribution of the harvestable surplus.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be effective as and less burdensome to the affected private persons than the proposed regulation.

VI. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VII. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of

California businesses to compete with businesses in other states. The proposed regulations are projected have an unknown impact on the net revenues to businesses in the Klamath River area servicing sport fishermen. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None.

- (f) Programs Mandated on Local Agencies or School Districts:

None.

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

- (h) Effect on Housing Costs:

None.

## **Informative Digest/Policy Statement Overview**

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